

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ELIDA ROSAS)	
Claimant)	
VS.)	
)	
IBP, INC.)	Docket No. 148,283
Respondent)	
Self-Insured)	

ORDER

Respondent requested review of the Award dated September 24, 1996, entered by Special Administrative Law Judge Michael T. Harris. The Appeals Board heard oral argument on April 1, 1997. Jeff Cooper was appointed Board Member Pro Tem to serve in place of Board Member Gary M. Korte who recused himself.

APPEARANCES

Diane F. Barger of Wichita, Kansas, appeared for the claimant. Tina M. Sabag of Dakota City, Nebraska, appeared for the respondent.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award. In addition, the medical report of Marc R. Baraban, M.D., whom the Administrative Law Judge selected to perform an independent medical evaluation, is also part of the evidentiary record.

ISSUES

The Special Administrative Law Judge awarded claimant permanent partial disability benefits for a 5 percent whole body functional impairment. The parties requested the Appeals Board to review the following issues:

- (1) Nature and extent of injury and disability.
- (2) Whether claimant provided respondent timely notice of accident and, if not, whether respondent was prejudiced by the lack of notice.
- (3) Whether claimant provided respondent with timely written claim.
- (4) Average weekly wage.
- (5) Whether claimant is entitled to unauthorized medical and future medical benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Award entered by the Special Administrative Law Judge should be modified.

Claimant alleges she permanently injured her back at work on February 6, 1990, when she slipped on a piece of fat and fell. Claimant immediately reported the incident to her supervisor and, therefore, provided respondent with timely notice of accident. Because respondent did not file its report of accident with the Division of Workers Compensation, claimant had one year to serve written claim for compensation upon the respondent which she did in October 1990.

When considering the entire record, the Appeals Board finds claimant has failed to prove the February 1990 accident caused any permanent injury to her back. Claimant did not initially seek any medical treatment for injuries arising from the incident and in May 1990 began maternity leave which lasted until October 4, 1990. Although claimant consulted Sergio Delgado, M.D., for upper extremity complaints in October 1990, she did not mention any back complaints. Indeed, claimant testified her back was fine during the maternity leave.

The only medical evidence claimant presented to prove she sustained a back injury while working for the respondent was from Edward J. Prostic, M.D. However, Dr. Prostic's testimony is not persuasive as he did not examine claimant until April 1993, over three

years after the February 1990 incident. Dr. Prostic was not aware claimant slipped and fell at Newman Hospital in October 1991 or aware she told a physical therapist at that time she did not have any previous low back problems.

Based upon the above, claimant's request for permanent partial disability benefits and future medical benefits related to the back should be denied. Respondent did not provide any medical treatment for the alleged back injury and claimant makes no request for any outstanding medical expense incurred for treatment of the back. However, claimant is entitled up to \$350 for unauthorized medical expense previously incurred upon presentation to respondent of proof of payment.

The above findings and conclusions render any remaining issues moot.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated September 24, 1996, entered by Special Administrative Law Judge Michael T. Harris should be, and hereby is, modified to deny claimant's request for permanent partial disability and future medical benefits.

The Appeals Board hereby adopts the remaining orders contained in the Award to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of May 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Diane F. Barger, Wichita, KS
Tina M. Sabag, Dakota City, NE
Office of Administrative Law Judge, Topeka, KS
Michael T. Harris, Special Administrative Law Judge

ELIDA ROSAS

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Philip S. Harness, Director